



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 385

[Docket No. FMCSA-2022-0128]

RIN 2126-AC48

Incorporation by Reference; North American Standard Out-of-Service Criteria; Hazardous Materials Safety Permits

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: FMCSA proposes amendments to its Hazardous Materials Safety Permits regulations to incorporate by reference the updated Commercial Vehicle Safety Alliance (CVSA) handbook containing inspection procedures and Out-of-Service Criteria (OOSC) for inspections of shipments of transuranic waste and highway route controlled quantities of radioactive material. The OOSC provide enforcement personnel nationwide, including FMCSA's State partners, with uniform enforcement tolerances for inspections. Currently, the regulations reference the April 1, 2021, edition of the handbook. Through this notice, FMCSA proposes to incorporate by reference the April 1, 2022, edition.

DATES: Comments must be received on or before [Insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by Docket Number FMCSA-2022-0128 using any of the following methods:

- Federal eRulemaking Portal: Go to <https://www.regulations.gov/docket/FMCSA-2022-0128/document>. Follow the online instructions for submitting comments.

- Mail: Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.
- Fax: (202) 493-2251.

Viewing incorporation by reference material: You may inspect the material proposed for incorporation by reference at U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590-0001 between 8 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366-1812. Copies of the material are available as indicated in the “EXECUTIVE SUMMARY AND 1 CFR 51” section of this preamble.

FOR FURTHER INFORMATION CONTACT: Mr. José Cestero, Vehicle and Roadside Operations Division, FMCSA, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001, (202) 366-5541, jose.cestero@dot.gov. If you have questions on viewing or submitting material to the docket, contact Dockets Operations, (202) 366-9826.

SUPPLEMENTARY INFORMATION:

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I. PUBLIC PARTICIPATION AND REQUEST FOR COMMENTS

A. Submitting Comments

If you submit a comment, please include the docket number for this NPRM (FMCSA-2022-0128), indicate the specific section of this document to which your comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <https://www.regulations.gov/docket/FMCSA-2022-0128/document>, click on this NPRM, click “Comment,” and type your comment into the text box on the following screen.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

Confidential Business Information (CBI)

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to the NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to the NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as “PROPIN” to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket of the NPRM. Submissions containing CBI should be sent to Mr. Brian Dahlin, Chief, Regulatory Analysis Division, Office of Policy, FMCSA, 1200 New Jersey Avenue SE, Washington DC 20590-0001. Any comments FMCSA receives not specifically designated as CBI will be placed in the public docket for this rulemaking.

B. Viewing Comments and Documents

To view any documents mentioned as being available in the docket, go to <https://www.regulations.gov/docket/FMCSA-2022-0128/document> and choose the document to review. To view comments, click this NPRM, then click “Browse Comments.” If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

C. Privacy

DOT solicits comments from the public to better inform its regulatory process, in accordance with 5 U.S.C. 553(c). DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL 14 – Federal Docket Management System (FDMS)), which can be reviewed at www.transportation.gov/privacy.

II. EXECUTIVE SUMMARY AND 1 CFR 51

This NPRM proposes to update an incorporation by reference found at 49 CFR 385.4(b)(1) and referenced at § 385.415(b). The provision at § 385.4(b)(1) currently references the April 1, 2021, edition of CVSA’s handbook titled “North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR Part 173.403.” The CVSA handbook contains inspection procedures and Out-of-Service Criteria (OOSC) for inspections of shipments of transuranic waste and highway route controlled quantities of radioactive material. The OOSC, while not regulations, provide enforcement personnel nationwide, including FMCSA’s State partners, with uniform enforcement tolerances for inspections. The material is available, and will continue to be available, for inspection at the FMCSA, Office of Safety, 1200 New Jersey Avenue SE, Washington, DC 20590 (Attention: Chief, Compliance Division) at (202) 366-1812. The document may be purchased from the Commercial Vehicle Safety Alliance, 6303 Ivy Lane, Suite 310, Greenbelt, MD 20770, (301) 830-6143, www.cvsa.org.

In this NPRM, FMCSA proposes to incorporate by reference the April 1, 2022, edition of the handbook. This NPRM will discuss all updates to the currently incorporated 2021 edition of the handbook.

Fourteen updates distinguish the April 1, 2022, handbook edition from the 2021 edition. The incorporation by reference of the 2022 edition does not impose new regulatory requirements.

III. ABBREVIATIONS

CDL	Commercial Driver's License
CVSA	Commercial Vehicle Safety Alliance
DOT	Department of Transportation
FMCSA	Federal Motor Carrier Safety Administration
FMCSRs	Federal Motor Carrier Safety Regulations
FR	Federal Register
MCMIS	Motor Carrier Management Information System
OOS	Out-of-Service
OOSC	Out-of-Service Criteria
RFA	Regulatory Flexibility Act
UMRA	The Unfunded Mandates Reform Act of 1995
U.S.C.	United States Code

IV. LEGAL BASIS FOR THE RULEMAKING

Congress has enacted several statutory provisions to ensure the safe transportation of hazardous materials in interstate commerce. Specifically, in provisions codified at 49 U.S.C. 5105(d), relating to inspections of motor vehicles carrying certain hazardous material, and 49 U.S.C. 5109, relating to motor carrier safety permits, the Secretary of Transportation is required to promulgate regulations as part of a comprehensive safety program on hazardous materials safety permits. The FMCSA Administrator has been delegated authority under 49 CFR 1.87(d)(2) to carry out the rulemaking functions vested in the Secretary of Transportation. Consistent with that authority, FMCSA has promulgated regulations under 49 CFR part 385, subpart E to address the congressional mandate on hazardous materials safety permits. Those regulations are the underlying provisions to which the material incorporated by reference discussed in this notice is applicable.

V. BACKGROUND

In 1986, the U.S. Department of Energy and CVSA entered into a cooperative agreement to develop a higher level of inspection procedures, out-of-service (OOS)

conditions and/or criteria, an inspection decal, and a training and certification program for inspectors to conduct inspections on shipments of transuranic waste and highway route controlled quantities of radioactive material. CVSA developed the North American Standard Level VI Inspection Program for Transuranic Waste and Highway Route Controlled Quantities of Radioactive Material. This inspection program for select radiological shipments includes inspection procedures, enhancements to the North American Standard Level I Inspection, radiological surveys, CVSA Level VI decal requirements, and the “North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR Part 173.403.” As of January 1, 2005, all vehicles and carriers transporting highway route controlled quantities of radioactive material are regulated by the U.S. Department of Transportation. All highway route controlled quantities of radioactive material must pass the North American Standard Level VI Inspection prior to the shipment being allowed to travel in the United States. All highway route controlled quantities of radioactive material shipments entering the United States must also pass the North American Standard Level VI Inspection either at the shipment’s point of origin or when the shipment enters the United States.

Section 385.415 of title 49, Code of Federal Regulations, prescribes operational requirements for motor carriers transporting hazardous materials for which a hazardous materials safety permit is required. Section 385.415(b) requires that motor carriers ensure a pre-trip inspection is performed on each motor vehicle to be used to transport a highway route controlled quantity of a Class 7 (radioactive) material, in accordance with the requirements of CVSA’s handbook titled “North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial

Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR Part 173.403.”

According to 2018-2021 data from FMCSA’s Motor Carrier Management Information System (MCMIS), approximately 2.86 million Level I – Level VI inspections were performed annually. Nearly 96 percent of these were Level I,¹ Level II,² and Level III³ inspections. During the same period, an average of 670 Level VI inspections were performed annually, comprising only 0.02 percent of all inspections. On average, OOS violations were cited in only 4 Level VI inspections annually (0.6 percent), whereas on average, OOS violations were cited in 212,603 Level I inspections (26 percent), 249,550 Level II inspections (25 percent), and 52,911 Level III inspections (6 percent) annually. As these statistics demonstrate, OOS violations are cited in a far lower percentage of Level VI inspections than Level I, II, and III inspections, due largely to the enhanced oversight and inspection of these vehicles because of the sensitive nature of the cargo being transported.

The changes to the 2022 edition of the CVSA handbook are intended to ensure clarity in the presentation of the OOS conditions and are generally editorial or ministerial. As discussed below, FMCSA does not expect the changes made in the 2022 edition of the CVSA handbook to affect the number of OOS violations cited during Level VI inspections.

VI. DISCUSSION OF PROPOSED RULEMAKING

¹ Level I is a 37-step inspection procedure that involves examination of the motor carrier’s and driver’s credentials, record of duty status, the mechanical condition of the vehicle, and any hazardous materials/dangerous goods that may be present.

² Level II is a driver and walk-around vehicle inspection, involving the inspection of items that can be checked without physically getting under the vehicle.

³ Level III is a driver-only inspection that includes examination of the driver’s credentials and documents.

Section 385.4(b)(1), as amended on December 23, 2021 (86 FR 72854), references the April 1, 2021, edition of the CVSA handbook. This NPRM proposes to amend § 385.4(b)(1) by replacing the reference to the April 1, 2021, edition date with a reference to the new edition date of April 1, 2022.

The changes made based on the 2022 edition of the handbook are outlined below. It is necessary to update the materials incorporated by reference to ensure motor carriers and enforcement officials have convenient access to the correctly identified inspection criteria referenced in the rules.

April 1, 2022, Changes

Fourteen changes in the 2022 edition of the CVSA handbook distinguish it from the April 1, 2021, edition:

1) The Policy Statement of Part I was amended to provide a clear definition of OOSC and define the term “imminent hazard.” CVSA determined that the term “imminent hazard” should be used to describe an OOSC. As such, wording was used to provide consistency between the OOSC and the Federal Motor Carrier Safety Regulations (FMCSRs). A note was also added to clarify that the OOSC in Part I does not apply to a co-driver. This clarification is not expected to have any effect on the number of OOS violations cited during Level VI inspections in the United States.

2) Part I, Item 2.a. and Item 3.a., was amended to add a note clarifying that information received from the National Law Enforcement Telecommunication System or the Commercial Driver’s License Information System may be used for U.S. home jurisdiction license verification without the need of additional confirmation. The changes are intended to ensure clarity in the presentation of the OOS conditions and are not expected to affect the number of OOS violations cited during Level VI inspections in the United States.

3) Part I, Item 2.b. and Item 3.c., were amended to clarify in the note on Mexico's "Licencia Federal de Conductor" (LFC) that only Class E requires an endorsement. Prior to February 25, 2016, a driver with Mexico's Class B license could operate a commercial motor vehicle combination that included double trailers. The "Observaciones" section on the back of the license did not include an explicit doubles endorsement. Similarly, a driver could obtain Mexico's Class E license and the "Observaciones" section on the back of the license did not include an explicit hazardous materials endorsement. After February 25, 2016, Mexico's Direccion General de Autotransporte Federal, Secretaría de Infraestructura, Comunicaciones, y Transportes required a new Class E license for drivers that wish and are qualified to operate doubles and/or transport hazardous materials. Additionally, the "Observaciones" section on the back of the license has an explicit endorsement specifying whether the driver is authorized to use doubles or transport hazardous materials or both. However, a clarification was needed to specify that the endorsement on the back of the license is for the Class E license, not the Class B license. This information had already been updated in the LFC Inspection Schematic issued in April 2021. This amendment is applicable only to the enforcement of Mexican regulations and will not have any effect on the number of OOS violations cited during Level VI inspections in the United States.

4) Part I, Item 7.c., was amended to add a table clarifying the Commercial Driver's License (CDL) and non-CDL drivers prohibited in the Drug and Alcohol Clearinghouse. Currently, this section details the OOS actions that are required to be taken when a driver is recorded in the Drug and Alcohol Clearinghouse as prohibited from performing safety-sensitive functions per 382.501(a). However, CVSA noted that the current FMCSRs, specifically § 382.501, do not state that a driver operating a non-CDL required vehicle and engaged in intrastate commerce be placed OOS. Therefore, a guidance table was provided to clarify the OOSC for CDL and non-CDL drivers

prohibited from performing safety sensitive functions during intrastate and interstate commerce. A note was also added explaining the applicability of the table. The changes are intended to ensure clarity in the presentation of the OOS conditions and are not expected to affect the number of OOS violations cited during Level VI inspections in the United States.

5) The Policy Statement of Part II was amended to provide a clear definition of OOSC and define the term “imminent hazard.” CVSA determined that the term “imminent hazard” should be used to describe an OOSC. As such, wording was used to provide consistency between the OOSC and the FMCSRs. A note was also added to clarify that the OOSC in Part I does not apply to a co-driver. This clarification is not expected to have any effect on the number of OOS violations cited during Level VI inspections in the United States.

6) The chart for “Defective Brakes” in Part II, Item 1.a., was amended to add a note to clarify that brakes on wheels required or not shall be used in the 20 percent calculation for the total number of brakes. Clarification was necessary specifically in driveaway/towaway combination cases where brakes are not required on the towed unit. The 20 percent calculation is only used to determine if the vehicle or combination is OOS based on the number of defective brakes versus the number of operational brakes. Therefore, CVSA determined that all brakes must be considered for the purpose of imminent hazard, whether they are required or not. This clarification is not expected to have any effect on the number of OOS violations cited during Level VI inspections in the United States.

7) Part II, Item 1.d.2., was amended to add language to specify that a breakaway device can be attached to a permanently mounted hitch. Clarification was needed to specify that a hitch that is bolted to the towing vehicle should be considered permanently attached to the vehicle. Thus, a breakaway device like a cable attached to a permanent

hitch is acceptable. This clarification is not expected to have any effect on the number of OOS violations cited during Level VI inspections in the United States.

8) Reference table Part II, Item 1.h.1. was amended to clarify when an air hose should be placed OOS. CVSA contacted the industry to discuss air brake hose failure modes and OOS conditions. Brake hose manufacturers provided information indicating that when the reinforcement ply layer is frayed the integrity of the brake hose is compromised and thus, to prevent a failure, the brake hose should be placed OOS. According to this information, The Society of Automotive Engineers provided updated language and guidance to the OOS condition. As such, CVSA added language to the OOS reference table and updated the diagram for air hoses/tubing. In addition, a note was also added to define the term “reinforcement ply.” The changes are intended to ensure clarity in the presentation of the OOS conditions and are not expected to affect the number of OOS violations cited during Level VI inspections in the United States.

9) Part II, Item 1.o., was amended to add an OOS condition to address a situation where the entire master cylinder assembly is found loose. In response to a video that shows an inspection where the entire master cylinder assembly, including the backup system, was loose on the firewall, CVSA determined that this condition, although rare, would cause a severe reduction in braking action and, in other cases, brake failure if the assembly is completely detached from the firewall. Part II, Item 1.o. was amended to add an OOS condition that a vehicle should be placed OOS when the master cylinder assembly including the backup system, power assist, or power brake unit has loose or missing mounting bolts. The changes are intended to ensure clarity in the presentation of the OOS conditions and are not expected to affect the number of OOS violations cited during Level VI inspections in the United States.

10) Part II, Item 9.b. was amended to clarify that this section only applies to lighting systems and no other electrical systems. There have been instances where

inspectors have been using this section and applying it incorrectly to electric brakes. The purpose of the OOS condition in the “Lighting Devices” section was to only address lighting. However, for further clarity, CVSA determined that the term “lighting” should be added to the existing language to clarify that this condition only applies to the lights. The changes are intended to ensure clarity in the presentation of the OOS conditions and are not expected to affect the number of OOS violations cited during Level VI inspections in the United States.

11) Part II, Item 12.a.2., was amended to remove the reference to “breaker strip” in a steering tire. The term “breaker strip” in the OOSC is outdated nomenclature that is no longer used in reference materials describing radial truck tires. Enforcement personnel therefore have trouble identifying and finding the area of the “breaker strip” in supporting documentation. Also, the sidewall and tread area OOS conditions cover the same area of the tire rendering the term redundant. As such, CVSA determined that the term “breaker strip” should be removed from the section. The changes are intended to ensure clarity in the presentation of the OOS conditions and are not expected to affect the number of OOS violations cited during Level VI inspections in the United States.

12) The Policy Statement of Part III was amended to provide a clear definition of OOSC and define the term “imminent hazard.” CVSA determined that the term “imminent hazard” should be used to describe an OOSC. As such, wording was used to provide consistency between the OOSC and the FMCSRs. A note was also added to clarify that the OOSC in Part III does not apply to a co-driver. This clarification is not expected to have any effect on the number of OOS violations cited during Level VI inspections in the United States.

13) Part III, Item 4.a., was amended to clarify in the notes that the identification number is not required on the transport vehicle if it is visible on the bulk packaging. CVSA determined that if there is no identification number on the transport vehicle, the

identification number displayed on an orange panel or incorporated with a placard (in the United States and Canada), or on a white square-on-point (United States only) that is visible on a bulk package is sufficient to satisfy the requirement. The changes are intended to ensure clarity in the presentation of the OOS conditions and are not expected to affect the number of OOS violations cited during Level VI inspections in the United States.

14) The Policy Statement of Part IV was amended to provide a better description of OOSC and define the term “imminent hazard.” The former policy statement stated that an “Out of Service Violation” preclude a driver from further operation of a commercial motor vehicle for a specified period of time or for some violations until a required condition is met. CVSA found that the language in the OOSC description needed consistency with the FMCSRs and determined that a driver that presents an “imminent hazard” precluding safe operation of a commercial motor vehicle should be used to describe OOSC. Specifically, 383.5 defines imminent hazard as the existence of any condition of a driver that substantially increases the likelihood of serious injury or death if not discontinued immediately. As such, CVSA updated the language in the OOSC and defined “imminent hazard” as described in the FMCSRs. A note was also added to clarify that the OOSC in Part IV does not apply to a co-driver. This clarification is not expected to have any effect on the number of OOS violations cited during Level VI inspections in the United States.

VII. INTERNATIONAL IMPACTS

Motor carriers and drivers are subject to the laws and regulations of the countries that they operate in, unless an international agreement states otherwise. Drivers and carriers should be aware of the regulatory differences between nations.

The CVSA is an organization representing Federal, State, and Provincial motor carrier safety enforcement agencies in the United States, Canada, and Mexico. The

OOSC provide uniform enforcement tolerances for inspections conducted in all three countries.

VIII. SECTION-BY-SECTION ANALYSIS

Section 385.4 Matter incorporated by reference

Section 385.4(b)(1), as amended on December 23, 2021, references the April 1, 2021, edition of the CVSA handbook. This NPRM would replace the reference to the April 1, 2021, edition date with a reference to the new edition date of April 1, 2022.

IX. REGULATORY ANALYSES

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

FMCSA has considered the impact of this notice of proposed rulemaking under E.O. 12866 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review, E.O. 13563 (76 FR 3821, Jan. 21, 2011), Improving Regulation and Regulatory Review, and DOT's regulatory policies and procedures. The Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB) determined that this notice of proposed rulemaking is not a significant regulatory action under section 3(f) of E.O. 12866, as supplemented by E.O. 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. Accordingly, OMB has not reviewed it under that E.O.

The proposed rule, if finalized, would update an incorporation by reference from the April 1, 2021, edition to the April 1, 2022, edition of CVSA's handbook titled "North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR Part 173.403." FMCSA reviewed its MCMIS data on inspections performed from 2018 to

2021 and does not expect the handbook updates to have any effect on the number of OOS violations cited during Level VI inspections. Therefore, the proposed rule's impact would be de minimis.

B. Congressional Review Act

This rule is not a *major rule* as defined under the Congressional Review Act (5 U.S.C. 801–808).⁴

C. Advance Notice of Proposed Rulemaking

Under 49 U.S.C. 31136(g), FMCSA is required to publish an advance notice of proposed rulemaking (ANPRM) or proceed with a negotiated rulemaking, if a proposed rule is likely to lead to the promulgation of a major rule. As this proposed rule is not likely to result in the promulgation of a major rule, the Agency is not required to issue an ANPRM or to proceed with a negotiated rulemaking.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601, et seq.) (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996,⁵ requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term small entities comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000 (5 U.S.C. 601(6)). Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies

⁴ A “major rule” means any rule that OMB finds has resulted in or is likely to result in (a) an annual effect on the economy of \$100 million or more; (b) a major increase in costs or prices for consumers, individual industries, geographic regions, Federal, State, or local government agencies; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets (49 CFR 389.3).

⁵ Pub. L. 104–121, 110 Stat. 857, (Mar. 29, 1996).

strive to lessen any adverse effects on these businesses. None of the updates from the 2022 edition impose new requirements or make substantive changes to the FMCSRs.

When an Agency issues a rulemaking proposal, the RFA requires the Agency to “prepare and make available an initial regulatory flexibility analysis” that will describe the impact of the proposed rule on small entities (5 U.S.C. 603(a)). Section 605 of the RFA allows an agency to certify a rule, instead of preparing an analysis, if the proposed rule is not expected to impact a substantial number of small entities. The proposed rule would update an incorporation by reference found at § 385.4(b)(1) and referenced at § 385.415(b), and would incorporate by reference the April 1, 2022, edition of the CVSA handbook. The changes to the 2022 edition of the CVSA handbook from the 2021 edition are intended to ensure clarity in the presentation of the OOS conditions and are generally editorial or ministerial. As noted above, FMCSA does not expect the changes made in the 2022 edition of the CVSA handbook to affect the number of OOS violations cited during Level VI inspections in the United States. Accordingly, I certify that the proposed action would not have a significant economic impact on a substantial number of small entities.

E. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996,⁶ FMCSA wants to assist small entities in understanding this proposed rule so they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small

⁶ Pub. L. 104–121, 110 Stat. 857, (Mar. 29, 1996).

Business Administration’s Small Business and Agriculture Regulatory Enforcement Ombudsman (Office of the National Ombudsman, see <https://www.sba.gov/about-sba/oversight-advocacy/office-national-ombudsman>) and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1-888-REG-FAIR (1-888-734-3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

F. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) requires Federal agencies to assess the effects of their discretionary regulatory actions. The Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of \$178 million (which is the value equivalent of \$100 million in 1995, adjusted for inflation to 2021 levels) or more in any 1 year. Though this NPRM would not result in such an expenditure, and the analytical requirements of UMRA do not apply as a result, the Agency discusses the effects of this rule elsewhere in this preamble.

G. Paperwork Reduction Act

This proposed rule contains no new information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

H. E.O. 13132 (Federalism)

A rule has implications for federalism under section 1(a) of E.O. 13132 if it has “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

FMCSA has determined that this rule would not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

I. Privacy

The Consolidated Appropriations Act, 2005,⁷ requires the Agency to assess the privacy impact of a regulation that will affect the privacy of individuals. This NPRM would not require the collection of personally identifiable information.

J. E.O. 13175 (Indian Tribal Governments)

This rule does not have Tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

K. National Environmental Policy Act of 1969

FMCSA analyzed this proposed rule pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680), Appendix 2, paragraph 6(b). This Categorical Exclusion (CE) covers minor revisions to regulations. The proposed requirements in this rulemaking are covered by this CE.

⁷ Pub. L. 108-447, 118 Stat. 2809, 3268, note following 5 U.S.C. 552a (Dec. 4, 2014).

List of Subjects in 49 CFR 385

Administrative practice and procedure, Highway safety, Incorporation by reference, Mexico, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, FMCSA proposes to amend 49 CFR chapter III, part 385, as set forth below:

PART 385--SAFETY FITNESS PROCEDURES

1. The authority citation for part 385 continues to read as follows:

Authority: 49 U.S.C. 113, 504, 521(b), 5105(d), 5109, 5113, 13901-13905, 13908, 31135, 31136, 31144, 31148, 31151, 31502; sec. 113(a), Pub. L. 103-311, 108 Stat. 1673, 1676; sec. 408, Pub. L. 104-88, 109 Stat. 803, 958; sec. 350, Pub. L. 107-87, 115 Stat. 833, 864; sec. 5205, Pub. L. 114-94, 129 Stat. 1312, 1537; and 49 CFR 1.87.

2. Amend § 385.4 by revising paragraphs (a) and (b)(1) to read as follows:

§ 385.4 Matter incorporated by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the FMCSA and at the National Archives and Records Administration (NARA). Contact FMCSA at: Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance, 1200 New Jersey Ave. SE, Washington, DC 20590; Attention: Chief, Compliance Division at (202) 366-1812. For information on the availability of this material at NARA, email: fr.inspection@nara.gov, or go to: www.archives.gov/federal-register/cfr/ibr-locations.html. The material may be obtained from the source in the following paragraph of this section.

(b) * * *

(1) “North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as

defined in 49 CFR Part 173.403,” April 1, 2022, incorporation by reference approved for § 385.415(b).

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Issued under authority delegated in 49 CFR 1.87.

Robin Hutcheson,
Deputy Administrator.

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